

## **S. C. BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

### **AGENDA**

*September 8, 2004*

*Call to Order – 9:30 a.m.*

*The Mills House Hotel, Lynch Room, 115 Meeting Street, Charleston, SC\**

#### **Council on Coastal Futures Dock Recommendations**

Recommendation 9: DHEC should evaluate community dock and marina definitions and policies with a goal of establishing best management and development practices for protection and access to the resource by providing DHEC-OCRM with the flexibility and mandate to allow private docks to be traded for community dock float lengths beyond the current limit of 200 feet, at an appropriate ratio.

Recommendation 10: DHEC-OCRM should encourage opportunities for voluntary dock planning efforts by cooperating landowners. When such efforts develop, DHEC-OCRM should participate as a technical advisor and facilitator.

9:30 Welcome and Introductions

9:40 Public Trust Doctrine

10:00 Dock Permitting in SC and other States

Richard Chinnis, Regulatory Division Director, DHEC-OCRM

10:15 Impact of Docks on the Environment

Geoff Scott, PhD, Director, NOAA/NOS/NCCOS

Center for Coastal Environmental Health and Biomolecular Research

Denise Sanger, Ph.D, Chief Scientist, DHEC-OCRM

10:45 Public and Dock Owner Perceptions: Results of Two Surveys

Debra Hernandez, P.E., Policy & Program Development, DHEC-OCRM

11:00 Break

11:15 Shellfish Habitat in SC

Robert Boyles, Director, DNR Marine Resources Division

David Whitaker, DNR Marine Resources Division

11:30 Marinas, Docks and Shellfish Harvesting Waters

David Baize, DHEC-EQC Bureau of Water

Director Water Monitoring, Assessment & Protection Division

11:45 Stakeholder Perspectives

12:15 Policy Discussion

1:00 Adjourn

***September 9, 2004***

***Call to Order – 9:30 a.m.***

***Charleston County Council Chambers***

***2<sup>nd</sup> Floor, 4045 Bridgeview Drive, Charleston, SC\*\****

1. Minutes of the July 8, 2004, Board Meeting - For Approval
2. Monthly Award for Excellence for August and September 2004 – For Information
3. South Carolina's Coastal and Estuarine Land Conservation Program (CELCP) Plan Development – Chris Brooks
4. Proposed Amendment of R.30-1, Statement of Policy, R.30-12, Specific Project Standards for Tidelands and Coastal Waters (DHEC Coastal Division regulations for permitting in the Critical areas of the Coastal Zone), RE: Permitting of Docks – For Initial Approval – Chris Brooks
5. Proposed Amendment of R.30-1, Statement of Policy, R.30-12, Specific Project Standards for Tidelands and Coastal Waters (DHEC Coastal Division regulations for permitting in the Critical areas of the Coastal Zone); RE: Permitting of Marinas – For Initial Approval – Chris Brooks
6. Proposed Repeal of R.61-41, Hotel – Motel Sanitation, Legislative Review is Required – For Initial Approval – Lisa F. Waddell, MD
7. Proposed Amendment of R.61-34.1, Pasteurized Milk and Milk Products, Legislative Review is Required – For Initial Approval – Lisa F. Waddell, MD
8. Proposed Amendments to Regulation 61-3, The Practice of Selling and Fitting Hearing Aids, Legislative Review is Required – For Initial Approval -- Leon Frishman
9. **PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL** – Proposed Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, State Register Document No. 2913, Legislative Review is not required – Robert King
10. **PUBLIC HEARING AND REQUEST FOR FINAL APPROVAL** – Proposed Amendment To R. 61-62.5, Standard No. 2, Ambient Air Quality Standards and the South Carolina State Implementation Plan (SIP), State Register Document No. 2912, Exempt from Legislative Review
11. Agency Affairs – Earl Hunter
12. Legal Report – Carl Roberts

**Executive Session**

**\* Parking available in City Garage behind The Mills House Hotel**

**\*\* From Columbia -- I-26 E to I-526 W (Exit 212-B to Savannah,) 2.9 miles to Leeds Avenue, left at light, around curve to first light, turn right onto Bridge View Road, left into Charleston County Public Services Building.**





Summary Sheet  
Board of Health and Environmental Control

September 2004

( ) Action/Decision  
(X) Information

- I.      TITLE:        SC's Coastal and Estuarine Land Conservation Program (CELCP)  
                         Plan Development
- II.      SUBJECT:     The SC CELCP Plan Draft
- III.     FACTS:        SCDHEC's Office of Ocean and Coastal Resource Management  
                         is designated as the lead agency responsible for developing South Carolina's Coastal and  
                         Estuarine Land Conservation Program Plan per the Final Guidelines issued by NOAA in  
                         June 2003 (<http://www.ocrm.nos.noaa.gov/landconservation.html>). The Program is  
                         intended to protect areas with significant conservation, recreation, ecological, historical  
                         or aesthetic values, or properties threatened by conversion from traditional uses. Under  
                         this Program, municipal governments and state agencies can submit proposals for CELCP  
                         funding. Proposals will undergo a review and ranking process before being nominated for  
                         NOAA's competitive national selection. A review committee comprised of OCRM staff,  
                         SCDNR staff and representatives from the private sector will conduct the proposal review  
                         process.
- IV.     ANALYSIS:    The CELCP plan builds upon existing land conservation efforts by  
                         incorporating existing National Estuarine Research Reserve management plans and other  
                         land conservation plans developed by private, municipal and state entities. OCRM staff  
                         solicited input from these groups during a stakeholder meeting and requested comments  
                         on the draft during its development. As a result of these efforts, a draft was completed in  
                         July of 2004 and is currently under review by NOAA. The CELCP boundary  
                         encompasses the coastal zone boundary, focus area boundaries provided by  
                         nongovernmental organizations such as The Nature Conservancy, and the coastal  
                         watershed boundary as defined by the USGS 8-digit hydrologic cataloging units.  
                         Priority areas are defined as those areas that will enhance ongoing conservation efforts,  
                         areas threatened by eminent land conversion, and areas that satisfy the values outlined in  
                         the CELCP Guidelines.

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Steve Moore, Planning Director

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Chris Brooks, Deputy Commissioner

Attachment:

Draft of the SC CELCP Plan

**BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**  
**SUMMARY SHEET**  
**September 9, 2004**

(X ) ACTION/DECISION

( ) INFORMATION

**I. TITLE:** Proposed Amendment of :

R.30-1, *Statement of Policy*,  
R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*  
(DHEC Coastal Division regulations for permitting in the  
Critical areas of the Coastal Zone);  
Re: Permitting of Docks

Legislative Review is Required

**II. SUBJECT:** Request Initial Approval to Publish a Notice of Proposed Regulation in the State Register to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum

**III. FACTS:**

1. Pursuant to S.C. Code Sections 48-39-10 *et seq.* the Department proposes to amend R.30-1, *Statement of Policy*, and R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*, two of the Department's Coastal regulations related to permitting in the critical areas of the Coastal Zone.

2. The proposed regulatory changes will clarify language related to the permitting of docks. The clarifications will specify which standards apply to which types of docks. Additionally, language is proposed to provide the Department with more incentives for the construction of community docks in lieu of multiple private docks. The changes are proposed to address questions raised by permittees and interested parties regarding the administration of the regulations, and primarily reflect current administrative practice. Generally, additional language and modifications of existing language will make the Department's regulations more user-friendly and specific.

3. A Table and Text of Proposed Amendment are submitted as Attachments B and C.

4. The Department initiated the statutory process for amendment of R.30-1 and R.30-12 by publication of a Notice of Drafting in the State Register on May 28, 2004. Notice was also published on the Department's website and included in DHEC Office of Ocean and Coastal Resource Management June 3, 2004 public notice. A copy of the Notice is submitted as Attachment D.

5. Participation was sought from the regulated community for the proposed changes. Stakeholder meetings were held on July 23 and August 20, 2004 in Charleston.

6. Pursuant to Department policy, the proposed changes were reviewed internally by appropriate Department staff.

7. The Department is requesting Board initial approval to provide notice of opportunity for public comment and to conduct a staff informational forum. If approved, a Notice of Proposed Regulation will be published in the State Register on September 24, 2004 a staff informational forum will be conducted on October 21, 2004 and a public hearing before the Board will be scheduled for November 10, 2004. A copy of the draft State Register Notice of Proposed Regulation is submitted as Attachment E.

### **III. ANALYSIS:**

These amendments are necessary to add clarity to existing regulations and enable Department staff to administer more effectively the regulatory program of the Coastal Division.

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of these amendments; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of these amendments and will further be utilized in the regulatory administration resulting from the amendments.

See Attachment A, Statement of Need and Reasonableness.

### **IV. RECOMMENDATION:**

Department staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the State Register to provide opportunity for public comment, to conduct a staff informational forum, to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Submitted By:

Approved By:

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Debra L. Hernandez, Director  
Policy and Program Development

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Christopher L. Brooks  
Deputy Commissioner  
Office of Ocean and Coastal Resource &  
Management

Attachments:

- A. Statement of Need and Reasonableness, and of Rationale
- B. Table of Proposed Amendment
- C. Text of Proposed Amendment
- D. State Register Notice of Drafting
- E. Draft State Register Notice of Proposed Regulation
- F. Applicable Law

# BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

## SUMMARY SHEET

September 9, 2004

(X ) ACTION/DECISION

( ) INFORMATION

**I. TITLE:** Proposed Amendment of :

R.30-1, *Statement of Policy*,  
R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*  
(DHEC Coastal Division regulations for permitting in the  
Critical areas of the Coastal Zone);  
Re: Permitting of Marinas

Legislative Review is Required

**II. SUBJECT:** Request Initial Approval to Publish a Notice of Proposed Regulation in the State Register to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum

### III. FACTS:

1. Pursuant to S.C. Code Sections 48-39-10 *et seq.* the Department proposes to amend R.30-1, *Statement of Policy*, and R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*, two of the Department's Coastal regulations related to permitting in the critical areas of the Coastal Zone.

2. The proposed regulatory changes will clarify language related to the permitting of marinas. The clarifications will specify which standards apply to which types of marinas. Additionally, language is proposed to provide the Department with more incentives for the construction of community docks in lieu of multiple private docks. The changes are proposed to address questions raised by permittees and interested parties regarding the administration of the regulations, and primarily reflect current administrative practice. Generally, additional language and modifications of existing language will make the Department's regulations more user-friendly and specific.

3. A Table and Text of Proposed Amendment are submitted as Attachments B and C.

4. The Department initiated the statutory process for amendment of R.30-1 and R.30-12 by publication of a Notice of Drafting in the State Register on May 28, 2004. Notice was also published on the Department's website and included in DHEC Office of Ocean and Coastal Resource Management June 3, 2004 public notice. A copy of the Notice is submitted as Attachment D.

5. Participation was sought from the regulated community for the proposed changes. Stakeholder meetings were held on July 23 and August 20, 2004 in Charleston.

6. Pursuant to Department policy, the proposed changes were reviewed internally by appropriate Department staff.

7. The Department is requesting Board initial approval to provide notice of opportunity for public comment and to conduct a staff informational forum. If approved, a Notice of Proposed Regulation will be published in the State Register on September 24, 2004 a staff informational forum will be conducted on October 21, 2004 and a



public hearing before the Board will be scheduled for November 10, 2004. A copy of the draft State Register Notice of Proposed Regulation is submitted as Attachment E.

### **III. ANALYSIS:**

These amendments are necessary to add clarity to existing regulations and enable Department staff to administer more effectively the regulatory program of the Coastal Division.

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of these amendments; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of these amendments and will further be utilized in the regulatory administration resulting from the amendments.

See Attachment A, Statement of Need and Reasonableness.

### **IV. RECOMMENDATION:**

Department staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the State Register to provide opportunity for public comment, to conduct a staff informational forum, to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Submitted By:

Approved By:

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Debra L. Hernandez, Director  
Policy and Program Development

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Christopher L. Brooks  
Deputy Commissioner  
Office of Ocean and Coastal Resource &  
Management

Attachments:

- A. Statement of Need and Reasonableness, and of Rationale
- B. Table of Proposed Amendment
- C. Text of Proposed Amendment
- D. State Register Notice of Drafting
- E. Draft State Register Notice of Proposed Regulation
- F. Applicable Law

# BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

## SUMMARY SHEET

September 9, 2004

- (X) ACTION/DECISION  
( ) INFORMATION

- I. TITLE: Proposed Repeal of R. 61-41. Hotel – Motel Sanitation, Legislative Review is Required
- II. SUBJECT: Request Initial Approval to Publish a Notice of Proposed Regulation in the State Register to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum
- III. FACTS:
1. This regulation was last revised in 1984. When the regulation was first promulgated, local building codes were virtually nonexistent; now all counties have such codes in place, and these codes at least partially address some of the concerns that were intended to be addressed by the regulation. The requirements and need for R.61-41 have become outdated and obsolete.
  2. Due to dwindling resources and prioritization of programs, the Department has not routinely inspected hotels and motels under this regulation in over 10 years; the Department continues to investigate complaints in hotels and motels.
  3. The hotel – motel industry has become largely self-regulating; the business is very customer-driven and competition dictates that facilities be maintained and operated properly.
  4. The public health concerns that the R.61-41 was intended to address can be addressed through other department regulations, such as R.61-56, Individual Sewage Treatment and Disposal Systems, and R.61-46, Nuisances.
  5. The Text of the Proposed Amendments is submitted as Attachments B.
  6. Staff initiated the statutory process for the repeal of R.61-41 by publication of a Notice of Drafting in the *State Register* on July 23, 2004. A copy of the July, 2004 notice is submitted as Attachment D. Notice was also published on the Department's website in its Regulation Development Update at [www.scdhec.net/co/regs](http://www.scdhec.net/co/regs). The most recent drafting comment period ended on August 24, 2004. No comments were received during the comment period.
  7. Internal review was conducted by Department staff and comments were incorporated into the proposed regulation repeal as appropriate.
  8. If granted initial approval to proceed, staff will publish a Notice of Proposed Regulation in the *State Register* on September 24, 2004 to provide opportunity for public comment. A staff informational forum will be scheduled for October 20, 2004 and a public hearing before the DHEC Board will be scheduled for November 10, 2004. A draft Notice of Proposed Regulation is included as Attachment C.

IV. ANALYSIS:

1. Regulation 61-41 is being repealed because the requirements and need for the regulation have become outdated and obsolete. The hotel – motel industry has become largely self-regulating; the business is very customer-driven and competition dictates that facilities be maintained and operated properly.
2. The public health concerns that the R.61-41 was intended to address can be addressed through other department regulations, such as R.61-56, Individual Sewage Treatment and Disposal Systems, and R.61-46, Nuisances. The Department can continue to respond to complaints in these facilities through these regulations.
3. More detailed information is available in a Statement of Need and Reasonableness and Rationale included as Attachment A.

V. RECOMMENDATION:

Department staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the *State Register* to provide opportunity for public comment, to conduct a staff informational forum, to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Submitted by:

Approved by:

Approved by:

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Roger D. Scott, RS  
Bureau Director  
Bureau of Environmental Health

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Richard L. Hatfield, RS  
Assistant Deputy Commissioner  
Public Health Services

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Lisa F. Waddell, MD  
Deputy Commissioner  
Health Services

Attachments:

Attachment A: Statement of Need and Reasonableness and Rationale

Attachment B: Text of Proposed Amendment

Attachment C: Draft State Register Notice of Proposed Regulation

Attachment D: State Register Notice of Drafting published on July 23, 2004

# BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

## SUMMARY SHEET

September 9, 2004

- (X) ACTION/DECISION  
( ) INFORMATION

- I. TITLE: Proposed Amendment of R. 61-34.1. Pasteurized Milk And Milk Products,  
Legislative Review is Required
- II. SUBJECT: Request Initial Approval to Publish a Notice of Proposed Regulation in the State Register to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum
- III. FACTS:
1. R.61-34.1 ensures that consumers are receiving safe, high quality Grade “A” milk and milk products. The Regulation was amended last in 1993.
  2. The proposed amendments will bring the Regulation into compliance with the latest guidelines of the Interstate Milk Shipments Conference Pasteurized Milk Ordinance and assure consumers that the latest sanitation requirements are being met by the dairy industry. Amendments will also insure that the regulation complies with the requirements of the federal Nutrition Labeling and Education Act, the federal Food, Drug and Cosmetic Act, and the South Carolina Administrative Procedures Act, and is compatible with R.61-36, *Frozen Desserts*. Other related editorial and stylistic changes have been made as necessary to improve the overall quality of the regulation.
  3. The United States Public Health Service, Food and Drug Administration (FDA) requires that South Carolina’s dairy regulation be at least as stringent as the Pasteurized Milk Ordinance in order for South Carolina milk producers to ship their products in interstate commerce and market their product as Grade “A” milk products; the FDA has previously cited the South Carolina program for not meeting this requirement..
  4. A Table of Revisions and the Text of the Proposed Amendments are submitted as Attachments B and C, respectively.
  5. Staff initiated the statutory process for the amendment of R.61-34.1 by publication of a Notice of Drafting in the *State Register* on July 23, 2004. A copy of the July, 2004 notice is submitted as Attachment E. Notice was also published on the Department’s website in its Regulation Development Update at [www.scdhec.net/co/regs](http://www.scdhec.net/co/regs). The most recent drafting comment period ended on August 24, 2004. No comments were received during the drafting comment period.
  6. Internal review was conducted by Department staff and comments were incorporated into the proposed regulation as appropriate.
  7. If granted initial approval to proceed, staff will publish a Notice of Proposed Regulation in the *State Register* on September 24, 2004 to provide opportunity for public comment. A staff informational

forum will be scheduled for October 20, 2004 and a public hearing before the DHEC Board will be scheduled for November 10, 2004. A draft Notice of Proposed Regulation is included as Attachment D.

#### IV. ANALYSIS:

1. Regulation 61-34.1 is being updated to incorporate the latest FDA guidelines for frozen desserts.
2. The regulation is also being updated to make it compatible with the requirements of the federal Nutrition Labeling and Education Act, the federal Food, Drug and Cosmetic Act, and the South Carolina Administrative Procedures Act, and is compatible with R.61-36, *Frozen Desserts*.
3. This regulation change is necessary to program requirements of the United States Public Health Service, Food and Drug Administration (FDA).
4. More detailed information is available in a Statement of Need and Reasonableness and Rationale included as Attachment A.

#### V. RECOMMENDATION:

Department staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the *State Register* to provide opportunity for public comment, to conduct a staff informational forum, to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Submitted by:

Approved by:

Approved by:

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Roger D. Scott, RS  
Bureau Director  
Bureau of Environmental Health

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Richard L. Hatfield, RS  
Assistant Deputy Commissioner  
Public Health Services

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Lisa F. Waddell, MD  
Deputy Commissioner  
Health Services

#### Attachments:

Attachment A: Statement of Need and Reasonableness and Rationale

Attachment B: Table of Revisions

Attachment C: Text of Proposed Amendment

Attachment D: Draft State Register Notice of Proposed Regulation

Attachment E: State Register Notice of Drafting published on July 23, 2004

# BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

## SUMMARY SHEET

September 9, 2004

  X   ACTION/DECISION

       INFORMATION

I. TITLE: Proposed Revised Regulation 61-3, *The Practice of Selling and Fitting Hearing Aids*

Legislative Review is Required

II. SUBJECT: Request Initial Approval to Publish a Notice of Revised Regulation in the *State Register* to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum

III. FACTS:

1. Pursuant to S.C. Code Ann. Section 40-25-10, *et seq.* (1976, as amended), Regulation 61-3, *The Practice of Selling and Fitting Hearing Aids*, was published in the *State Register* on January 22, 1988, and has not been revised since that date. The Department proposes to revise R. 61-3.

2. S.C. Code Ann. Section 1-23-120 (1976, as amended) of the Administrative Procedures Act requires state agencies to perform a review of their regulations every five years and update them if necessary.

3. As a result of the review of this regulation, statutory mandates, and need to update and improve the overall quality of the regulation, the Department is proposing to revise R.61-3. This proposed revision will be rewritten in its entirety to include, but not be limited to: definitions; licensing requirements; licensing fee amounts; reporting requirements; Departmental consultations; enforcement action procedures; sections related to temporary permits; sponsor duties; continuing education; sales procedures; exceptions related to hearing aid specialists; add a severability clause, and change the title to: "The Practice of Specializing in Hearing Aids." Copies of the applicable statutes are submitted as Attachment G.

4. A Summary of the Revised Regulation and the Text of the proposed regulation revision rewrite are submitted as Attachments B and C respectively. An underlined/strikeout version of the proposed changes to the existing Regulation is submitted as Attachment D, and the current R.61-3 is submitted as Attachment H.

5. DHEC staff initiated the statutory process for promulgation of this regulation by publication of a Notice of Drafting in the *State Register* on January 23, 2004, and copies of a preliminary draft revision were provided to the Commission of Hearing Aid Specialists on December 18, 2003, for its review. Notice of intent to promulgate this amendment was also published on the Department's website in the Regulation Development Update. A copy of the Notice of Drafting is submitted as Attachment F. Suggestions and comments from these sources were considered in the draft.

6. All comments received subsequent to January 23, 2004, were considered in formulating the proposed regulation revision now before the Board. The proposed regulation revision was submitted to appropriate DHEC staff for internal review prior to seeking Board initial approval for public notice.

7. DHEC staff is requesting initial approval to publish a public notice of the proposed regulation revision in the *State Register* to provide opportunity for public comment and to conduct a Staff Informational Forum. If approved, a Notice of Proposed Regulation will be published in the *State Register* on September 24, 2004; a Staff Informational Forum will be conducted on October 27, 2004; and a Public Hearing before the Board will be scheduled for December 9, 2004. A copy of the draft notice is submitted as Attachment E.

#### IV. ANALYSIS:

1. The proposed regulation revision is needed and reasonable because it will bring the Department into compliance with the statutory mandate to review and update regulations if necessary.

2. A detailed Statement of Need and Reasonableness and a Statement of Rationale are submitted as Attachment A.

V. RECOMMENDATION: DHEC's Bureau of Health Facilities Regulation recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the *State Register* to provide opportunity for public comment, to conduct a Staff Informational Forum to receive and consider comments, and allow staff to proceed to Public Hearing before the Board.

Submitted By:

Approved By:

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Jerry L. Paul  
Director  
Bureau of Health Facilities Regulation

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Leon B. Frishman  
Deputy Commissioner  
Health Regulations

#### Attachments:

- A. Statement of Need and Reasonableness and Statement of Rationale
- B. Summary of Proposed Regulation Revision
- C. Text of Proposed Regulation Revision
- D. Underlined/Strikeout Version of Proposed Changes to Existing Regulation
- E. Draft *State Register* Notice of Proposed Regulation
- F. *State Register* Notice of Drafting published January 23, 2004
- G. Copy of Applicable Statutes
- H. Existing R.61-3

SUMMARY SHEET  
**BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**  
September 9, 2004

(X) ACTION  
( ) INFORMATION

I. TITLE: Public Hearing Before the Board and Consideration for Final Approval.  
Proposed Amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*.  
*State Register* Document No. 2913  
Legislative review is not required.

II. SUBJECT: Request for Finding of Need and Reasonableness Pursuant to S.C. Code Section 1-23-111.

III. FACTS:

1. The Department proposes to amend Regulation 61-62, *Air Pollution Control Regulations and Standards*, to incorporate new Federal requirements into the existing regulations. The proposed amendments are necessary to maintain consistency with Federal rules and will not require legislative review. The Summary of Proposed Revisions and Text of the Proposed Amendments are submitted as Attachments B and C, respectively.

2. Among the revisions being proposed are amendments to R. 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; R. 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, also known as Maximum Achievable Control Technology (MACT) standards; and R. 61-62.70, *Title V Operating Permit Program* to incorporate recent Federal amendments promulgated during the period from January 1, 2003, through December 31, 2003.

The Department also proposes to add a new *Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP)*. Prior to the promulgation of MACT standards for source categories, the Environmental Protection Agency (EPA) promulgated emission standards for specific hazardous air pollutants in 40 CFR Part 61 NESHAP. The Department proposes to incorporate by reference into this new regulation, R.61-62.61, the general requirements and emission standards that have been promulgated in 40 CFR Part 61 for which the Department requested and received delegation of authority to implement and enforce. In addition, the Department proposes to incorporate recent Federal amendments to 61-62.68, *Chemical Accident Prevention Provisions*, promulgated April 9, 2004, to amend the reporting requirements of its chemical accident prevention regulations. Finally, the Department may propose typographical corrections and clarifications to R.61-62 as necessary.

3. A Notice of Drafting for these proposed changes was published in the *State Register* on April 23, 2004. The drafting comment period for the Notice ended on May 24, 2004. The Department received no comments to the Notice of Drafting. A copy of the Notice of Drafting is submitted as Attachment D.

4. A copy of the applicable law is submitted as Attachment E.

5. On July 8, 2004, the Board granted staff initial approval to public notice the proposed amendments,



to provide opportunity for public comment, and to arrange a staff-conducted informational forum. A Notice of Proposed Regulation was published in the *State Register* on July 23, 2004, as Document No. 2913. A Notice of Public Hearing was mailed to all concerned parties included on a Bureau of Air Quality regulation development mailing list maintained by the Department. Notice of the proposed regulation was also published on the Department's website. An excerpt of the Notice is submitted as Attachment F.

6. A staff-conducted informational forum was held August 23, 2004, for the purpose of answering questions, clarifying issues, and accepting formal comments from interested public on the proposed amendments. No written comments were received during the informational forum regarding any of the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*. However, the Department received several oral comments requesting clarification of the proposed regulation amendments.

7. Department staff is requesting public hearing and a finding of need and reasonableness of the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*.

#### IV. ANALYSIS:

The proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, are necessary to ensure compliance and maintain conformity with Federal requirements and standards. For specific details, see the Statement of Need and Reasonableness submitted as Attachment A.

#### V. RECOMMENDATION:

Department staff recommend that, based upon the public hearing and attached information, the Board find for the need and reasonableness of the proposed regulation and approve it for publication as final in the *State Register*.

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Myra C. Reece  
Chief  
Bureau of Air Quality

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Robert W. King, Jr., P. E.  
Deputy Commissioner  
Environmental Quality Control

#### Attachments:

- A. Statement of Need and Reasonableness
- B. Summary of Proposed Revisions
- C. Text of Proposed Revisions
- D. State Register Notice of Drafting published April 23, 2004
- E. Copy of Applicable Law
- F. Draft State Register Notice of Proposed Regulation

SUMMARY SHEET  
**BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**  
September 9, 2004

(X) ACTION  
( ) INFORMATION

I. TITLE: Public Hearing Before the Board and Consideration for Final Approval.  
Proposed Amendment of Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, and the South Carolina State Implementation Plan (SIP).  
*State Register* Document No. 2912.  
Exempt From Legislative Review.

II. SUBJECT: Request for Finding of Need and Reasonableness Pursuant to S.C. Code Section 1-23-111.

III. FACTS

1. The Department proposes to amend Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, and the State Implementation Plan (SIP), to incorporate new Federal requirements into the existing regulations. The proposed amendments are necessary to maintain consistency with Federal rules and will not require legislative review. The Summary of Proposed Revisions and Text of the Proposed Amendments are submitted as Attachments B and C.

2. The revision being proposed is an amendment to R. 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, to incorporate recent Federal amendments to the ozone and particulate matter National Ambient Air Quality Standards (NAAQS).

3. A Notice of Drafting for these proposed changes was published in the *State Register* on August 22, 2003. The drafting comment period for the Notice ended on September 29, 2003. The Department received no comments to the Notice of Drafting. A copy of the Notice of Drafting is submitted as Attachment D.

4. On April 15, 2004, the Board granted staff initial approval to public notice the proposed amendments, to provide opportunity for public comment, and to arrange a staff-conducted informational forum. A Notice of Proposed Regulation was published in the *State Register* on May 28, 2004, as Document No. 2912. A Notice of Public Hearing was mailed to all concerned parties included on a Bureau of Air Quality regulation development mailing list maintained by the Department. Notice of the proposed regulation was also published on the Department's website. An excerpt of the Notice is submitted as Attachment E.

5. A copy of the applicable law is submitted as Attachment F.

6. One written comment was received during the comment period of the proposed regulation. As a result of this comment, a minor modification to Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, was made.

7. A staff-conducted informational forum was held on June 28, 2004, for the purpose of answering questions, clarifying issues, and accepting formal comments from interested public on the proposed amendments. No oral or written comments were received during the informational forum regarding any of the proposed amendments to Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*.

8. Department staff is requesting public hearing and a finding of need and reasonableness of the proposed amendments to Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*.

#### IV. ANALYSIS:

The proposed amendments to Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, are necessary to ensure compliance and maintain conformity with Federal requirements and standards. For specific details, see the Statement of Need and Reasonableness submitted as Attachment A.

#### V. RECOMMENDATION:

Department staff recommend that, based upon the public hearing and attached information, the Board find for the need and reasonableness of the proposed regulation and approve it for publication as final in the *State Register*.

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Myra C. Reece  
Chief  
Bureau of Air Quality

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Robert W. King, Jr., P. E.  
Deputy Commissioner  
Environmental Quality Control

#### Attachments:

- A. Statement of Need and Reasonableness
- B. Summary of Proposed Revisions For Final Consideration
- C. Text of Proposed Amendments to *Regulation 61-62* For Final Consideration
- D. *State Register* Notice of Drafting published August 22, 2003
- E. *State Register* Notice of Proposed Regulation, published May 28, 2004, Document No. 2912
- F. Copy of Applicable Law